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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 13 2010

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IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an energy consulting services business. It seeks to employ the beneficiary permanently in the United States as an engineer. As required by statute, the petition is accompanied by a Form ETA 9089 Application for Permanent Employment Certification certified by the U.S. Department of Labor (DOL). The director determined that the petitioner had indicated on the labor certification that the position requires a bachelor's degree in engineering and 36 months experience or a master's degree in engineering and 36 months experience. Thus, the position did not require a professional with at least a bachelor's degree in engineering and five years of experience or an alien of exceptional ability. The director denied the petition accordingly.

The record demonstrated that the appeal was properly filed, was timely, and made a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The director's denial was dated September 14, 2009. On Part 2 of the Form I-140 petition, the petitioner checked box "d," indicating that it seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree or an alien of exceptional ability. The director determined that the petitioner incorrectly indicated the educational requirements for the position on the labor certification.

The AAO will affirm the director's denial and dismiss the appeal. Upon review, the director's decision was proper under the law and regulations. As will be discussed in detail, a petitioner may not make material changes to a petition after adjudication in order to establish eligibility. Additionally, the Act prohibits U.S. Citizenship and Immigration Services (USCIS) from providing a petitioner with multiple adjudications for a single petition with a single fee. The petitioner claims that it erroneously stated that the position requires a doctorate in business administration, management, or a closely related field.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The specific requirements for supporting documents to establish that an alien has gained sufficient experience are set forth in the regulation at 8 C.F.R. § 204.5(l)(3):

Initial evidence—

(i) *Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. To apply for Schedule A designation or to establish that the alien's occupation is a shortage occupation with the Labor Market Pilot Program, a fully executed uncertified Form ETA–750 in duplicate must accompany the petition. The job offer portion of an individual labor certification, Schedule A application, or Pilot Program application for a professional must demonstrate that the job requires the minimum of a baccalaureate degree.

(ii) *Other documentation—*

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

On September 14, 2009, the director denied the petition finding that the petitioner incorrectly indicated that the position requires a bachelor's degree in engineering and 36 months experience or a master's degree in engineering and 36 months experience.

On appeal, the petitioner asserts that the beneficiary meets the definition of a professional, as the beneficiary possesses over five years of experience. As discussed, the labor certification clearly stated that that the position requires a bachelor's degree in engineering and 36 months experience or a master's degree in engineering and 36 months experience. The petitioner signed the labor certification under penalty of perjury, attesting that the information on the form was correct. As the petition was unaccompanied by instructions from the petitioner specifying otherwise, the director properly adjudicated the petition pursuant to section 203(b)(2) of the Act. Since the director's decision was not in error, the petitioner is precluded from requesting a change of educational requirements on appeal. A request for a change of classification will not be entertained for a petition that has already been adjudicated. A post-adjudication alteration of the labor certification constitutes a material change. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The initial filing fee for the Form I-140 petition covered the cost of the director's adjudication of the Form I-140 petition. Pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition to the statutory requirement, Office of Management and Budget (OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service.[1] On appeal, the petitioner has cited no statute, regulation, or standing precedent that permits a petitioner to change the educational requirements for a position once a decision has been rendered by the director.

In this matter, the petitioner's appellate submission did not address the beneficiary's eligibility pursuant to section 203(b)(2) of the Act. With regard to regulatory requirements at 8 C.F.R. § 204.5(l), the petitioner has not specifically challenged the reasons stated for denial and has not provided any additional evidence to overcome the director's decision.

Review of the record does not establish that the beneficiary possesses a doctorate in business administration, management, or a closely related field . Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(2) of the Act, and the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

[1] *See* http://www.whitehouse.gov/omb/circulars/a025/a025.html (last visited May 10, 2010).